

Introduced by Committee on Governmental Organization (Senators Wright (Chair), Anderson, Berryhill, Calderon, Cannella, Corbett, De León, Evans, Hernandez, Padilla, Strickland, Wyland, and Yee)

March 21, 2011

An act to amend Sections 23800 and 25503.56 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 937, as introduced, Committee on Governmental Organization. Alcoholic beverages: licenses.

The Alcoholic Beverage Control Act contains various provisions regulating the application for, the issuance of, the suspension of, and the conditions imposed upon, alcoholic beverage licenses by the Department of Alcoholic Beverage Control. The Alcoholic Beverage Control Act authorizes the Department of Alcoholic Beverage Control to impose reasonable conditions on the exercise of retail privileges under the act. Existing law also authorizes the department to issue to the holder of any off-sale retail license an instructional tasting license that would allow the licenseholder to allow an authorized licensee, as defined, or designated representative of that licensee, to conduct, on a designated portion of, or contiguous to, an existing licensed premises, an instructional tasting event at which tastes of alcoholic beverages may be served to consumers, as provided.

This bill would make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 23800 of the Business and Professions Code is amended to read:

23800. The department may place reasonable conditions upon retail licensees or upon any licensee in the exercise of retail privileges in the following situations:

(a) If grounds exist for the denial of an application for a license or where a protest against the issuance of a license is filed and if the department finds that those grounds may be removed by the imposition of those conditions.

(b) Where findings are made by the department which would justify a suspension or revocation of a license, and where the imposition of a condition is reasonably related to those findings. In the case of a suspension, the conditions may be in lieu of or in addition to the suspension.

(c) Where the department issues an order suspending or revoking only a portion of the privileges to be exercised under the license.

(d) Where findings are made by the department that the licensee has failed to correct objectionable conditions within a reasonable time after receipt of notice to make corrections given pursuant to subdivision (e) of Section 24200, or subdivision (a) or (b) of Section 24200.1.

(e) (1) At the time of transfer of a license pursuant to Section 24070, 24071.1, or 24071.2, ~~or 24072~~ and upon written notice to the licensee, the department may adopt conditions that the department determines are reasonable pursuant to its investigation or that are requested by the local governing body, or its designated subordinate officer or agency, in whose jurisdiction the license is located. The request for conditions shall be supported by substantial evidence that the problems either on the premises or in the immediate vicinity identified by the local governing body or its designated subordinate officer or agency will be mitigated by the conditions. Upon receipt of the request for conditions, the department shall either adopt the conditions requested or notify the local governing body, or its designated subordinate officer or agency, in writing of its determination that there is not substantial evidence that the problem exists or that the conditions would not mitigate the problems identified. The department may adopt conditions only when the request is filed. Any request for

conditions from the local governing body or its designated subordinate officer or agency pursuant to this provision shall be filed with the department within the time authorized for a local law enforcement agency to file a protest or proposed conditions pursuant to Section 23987.

(2) If the license to be transferred subject to paragraph (1) is located in an area of undue concentration as defined in Section 23958.4, the period within which the local governing body or its designated subordinate officer or agency may submit a written request for conditions shall be 40 days after the mailing of the notices required by Section 23987. For purposes of this provision only, undue concentration shall be established when the requirements of both paragraph (1) of subdivision (a) and either paragraph (2) or paragraph (3) of subdivision (a) of Section 23958.4 exist. Pursuant to Section 23987, the department may extend the 40-day period for a period not to exceed an additional 20 days upon the written request of any local law enforcement agency or local government entity with jurisdiction. Nothing in this paragraph is intended to reduce the burden of the local governing body or its designated subordinate officer or agency to support any request for conditions as required by paragraph (1). Notwithstanding Section 23987, the department may not transfer any license subject to this paragraph until after the time period permitted to request conditions as specified in this paragraph.

(f) At the time of a transfer of a license pursuant to Article 5 (commencing with Section 24070) of Chapter 6.

SEC. 2. Section 25503.56 of the Business and Professions Code is amended to read:

25503.56. (a) An authorized licensee, or a designated representative of an authorized licensee acting as an agent of the authorized licensee, may conduct, on the area specified by paragraph (1) of subdivision (c) of Section 23396.6, an instructional tasting event for consumers on the subject of wine, beer, or distilled spirits, including, but not limited to, the history, nature, values, and characteristics of wine, beer, or distilled spirits, and the methods of presenting and serving wine, beer, or distilled spirits.

(1) (A) Except as provided in subparagraph (B), the instructional tasting event may include the serving of alcoholic beverages to an attendee of legal drinking age. An instructional tasting event on the subject of wine or distilled spirits shall be

1 limited to not more than three tastings per person per day. A single
2 tasting of distilled spirits shall not exceed one-fourth of one ounce
3 and a single tasting of wine shall not exceed one ounce. An
4 instructional tasting event on the subject of beer shall be limited
5 to not more than the tasting of eight ounces of beer per person per
6 day. The wine, beer, or distilled spirits tasted shall be limited to
7 the products that are authorized to be sold by the authorized
8 licensee and the licenseholder under its off-sale license.

9 (B) A beer and wine wholesaler may conduct an instructional
10 tasting event but shall not serve tastes of beer unless the beer and
11 wine wholesaler also holds a beer manufacturer's license, an
12 out-of-state beer manufacturer's certificate, or more than six
13 distilled spirits wholesaler's licenses.

14 (C) No charge of any sort shall be made for the tastings. ~~Except~~
15 *tastings. Except* for the purposes of Section 23985, the serving of
16 tastings shall not be deemed a sale of products pursuant to this
17 division.

18 (D) A person under 21 years of age shall not serve wine, beer,
19 or distilled spirits at the instructional tasting event.

20 (E) All tastes shall be served by an employee of the authorized
21 licensee, the designated representative of the authorized licensee,
22 or by an employee of the designated representative of the
23 authorized licensee.

24 (F) An authorized licensee, or a designated representative of an
25 authorized licensee, shall either supply the wine or distilled spirits
26 to be tasted during the instructional tasting event or purchase the
27 wine or distilled spirits from the licenseholder at the original
28 invoiced cost. An authorized licensee, or a designated
29 representative of an authorized licensee, shall purchase beer to be
30 tasted during the instructional tasting event from the licenseholder
31 at the original invoiced cost.

32 (G) Any unused wine, beer, or distilled spirits remaining from
33 the tasting shall be removed from the off-sale licensed premises
34 by the authorized licensee or its designated representative.

35 (2) If the instructional tasting event is conducted by a designated
36 representative of an authorized licensee, the designated
37 representative shall not be owned, controlled, or employed directly
38 or indirectly by the licenseholder on whose premises the
39 instructional tasting event is held.

(3) An instructional tasting event shall be limited to a single type of alcoholic beverage. For purposes of this paragraph, “type of alcoholic beverage” means distilled spirits, wine, or beer.

(b) For purposes of this section:

(1) “Authorized licensee” means a winegrower, California winegrower’s agent, beer and wine importer general, beer and wine wholesaler, wine rectifier, distilled spirits manufacturer, distilled spirits manufacturer’s agent, distilled spirits importer general, distilled spirits rectifier, distilled spirits general rectifier, rectifier, out-of-state distilled spirits shipper’s certificate holder, distilled spirits wholesaler, brandy manufacturer, brandy importer, California brandy wholesaler, beer manufacturer, or an out-of-state beer manufacturer certificate holder. “Authorized licensee” shall not include an entity that solely holds a combination of a beer and wine wholesale license and an off-sale beer and wine retail license or holds those ~~licensees~~ *licenses* solely in combination with any license not listed in this paragraph.

(2) “Licenseholder” means an off-sale retail licensee issued an instructional tasting license pursuant to Section 23396.6.

(3) “Location” means the total contiguous area encompassed by the off-sale and on-sale licenses.

(c) Notwithstanding subparagraph (E) of paragraph (1) of subdivision (a), a licenseholder may conduct an instructional tasting event that includes the serving of tastings only when an authorized licensee or its designated representative are unable to conduct an instructional tasting event previously advertised pursuant to this section and scheduled by the authorized licensee or its designated representative, provided the licenseholder supplies the wine, beer, or distilled spirits used in the instructional tasting event and provides or pays for a person to serve the wine, beer, or distilled spirits. Instructional tasting events conducted by a licenseholder pursuant to this subdivision are subject to the provisions of this section and Section 23396.6.

(d) No more than one authorized licensee, or its designated representative, may conduct an instructional tasting event that includes the serving of tastes of wine, beer, or distilled spirits at any one individual licensed premises of a licenseholder per day.

(e) A licenseholder that also holds an on-sale beer and wine license, an on-sale beer and wine eating place license, or an on-sale general license shall not allow an authorized licensee, or its

1 designated representative, to conduct an instructional tasting event
2 on the same day and at the same location as any instructional
3 tasting event held pursuant to subdivision (b) of Section 23386,
4 Section 25503.4, subdivision (c) of Section 25503.5, or Section
5 25503.55.

6 (f) A licenseholder shall not condition the allowance of an
7 instructional tasting event upon the use of a particular designated
8 representative of an authorized licensee.

9 (g) (1) In addition to any point of sale advertising or other
10 advertising items allowed under this division or under rules of the
11 department, an authorized licensee or its designated representative,
12 in his or her absolute discretion and with permission of the
13 licenseholder upon whose premises the instructional tasting event
14 will be held, may list in an advertisement to the general public the
15 name and address of the licenseholder, the names of the alcoholic
16 beverages being featured at the instructional tasting event, and the
17 time, date, and location of, and other information about, the
18 instructional tasting event, provided that both of the following
19 apply:

20 (A) The advertisement does not contain the retail price of the
21 alcoholic beverages.

22 (B) The listing of the licenseholder's name and address is the
23 only reference to the licenseholder in the advertisement.

24 (2) Pictures or illustrations of the licenseholder's licensed
25 premises and laudatory references to the licenseholder in these
26 advertisements are not authorized. Nothing in this section shall
27 authorize an authorized licensee or its designated representative
28 to share in the costs, if any, of the licenseholder.

29 (h) A licenseholder may advertise an instructional tasting event
30 to the general public. The costs of this advertising shall be borne
31 solely by the licenseholder. Advertising permitted by this
32 subdivision includes flyers, newspaper ads, Internet
33 communications, and interior signage.

34 (i) Except as otherwise provided in this division or rules of the
35 department, no premium, gift, free goods, or other thing of value
36 shall be given away by an authorized licensee or its designated
37 representative in connection with an instructional tasting event
38 that includes tastings of an alcoholic beverage.

39 (j) The licenseholder or the authorized licensee or its designated
40 representative are authorized to perform set up and break down of

1 the instructional tasting event area. The authorized licensee or its
2 designated representative may provide, free of charge to the
3 licenseholder, the equipment, materials, and utensils as may be
4 required for use in connection with the instructional tasting event.

5 (k) (1) A licenseholder shall not require, or enter into a collusive
6 scheme with an authorized licensee or its designated representative
7 to conduct one or more instructional tasting events as a condition
8 of the licenseholder carrying or continuing to carry a brand or
9 brands of the authorized licensee or as a condition for display or
10 other merchandising plan which is based on an agreement to
11 provide shelf space. An authorized licensee or its designated
12 representative shall not require any preferential treatment or benefit
13 from, or enter into a collusive scheme with, a licenseholder as a
14 condition of conducting one or more instructional tasting events,
15 require a licenseholder to carry or continue to carry a brand or
16 brands of the authorized licensee as a condition of conducting one
17 or more instructional tasting events, or condition display or other
18 merchandising plans that are based on agreements for the provision
19 of shelf space on the conducting of one or more instructional tasting
20 events. Any agreement, whether written or oral, entered into by
21 and between a licenseholder and an authorized licensee or its
22 designated representative that precludes the conducting of
23 instructional tasting events on the premises of the licenseholder
24 by any other authorized licensee is prohibited. A licenseholder or
25 authorized licensee, or its designated representative, shall not use
26 an instructional tasting event to circumvent any other requirements
27 of this division.

28 (2) In addition to any other remedies available under this
29 division, upon a finding by the department of a failure to comply
30 with this subdivision, the department shall suspend the instructional
31 tasting license of the licenseholder and the privilege of the
32 authorized licensee to conduct instructional events for not less than
33 six months but for no more than one year.

34 (l) The Legislature finds that it is necessary and proper to require
35 a separation between manufacturing interests, wholesale interests,
36 and retail interests in the production and distribution of alcoholic
37 beverages in order to prevent suppliers from dominating local
38 markets through vertical integration and to prevent excessive sales
39 of alcoholic beverages produced by overly aggressive marketing
40 techniques. The Legislature further finds that the exception

- 1 established by this section to the general prohibition against tied
- 2 interests must be limited to its express terms so as not to undermine
- 3 the general prohibition, and intends that this section be construed
- 4 accordingly.